

Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective June 17, 2001 and Commission Rule 133.305, titled Medical Dispute Resolution-General, and 133.307, titled Medical Dispute Resolution of a Medical Fee Dispute, a review was conducted by the Medical Review Division regarding a medical fee dispute between the requestor and the respondent named above.

### **I. DISPUTE**

1.
  - a. Whether there should be additional reimbursement for date of service 11/14/01.
  - b. The request was received on 07/02/02.

### **II. EXHIBITS**

1. Requestor, Exhibit I:
  - a. TWCC 60 and Letter Requesting Dispute Resolution
  - b. HCFAs-1450
  - c. EOBs
  - d. Example EOBs from other carriers
  - e. Medical Records
  - f. Any additional documentation submitted was considered, but has not been summarized because the documentation would not have affected the decision outcome.
2. Respondent, Exhibit II:
  - a. TWCC 60 and Response to a Request for Dispute Resolution
  - b. HCFAs-1450
  - c. EOBs
  - d. Medical Records
  - e. Methodology data
  - f. Any additional documentation submitted was considered, but has not been summarized because the documentation would not have affected the decision outcome.
3. Rule 133.307 (g) (3), the Division forwarded a copy of the requestor's 14 day response to the insurance carrier on 08/02/02. Per Rule 133.307 (g) (4), the carrier representative signed for the copy on 08/06/02. The response from the insurance carrier was received in the Division on 08/09/02. Based on 133.307 (i) the insurance carrier's response is timely.
3. Notice of Medical Dispute is reflected as Exhibit III of the Commission's case file.

### **III. PARTIES' POSITIONS**

1. Requestor: Letter dated 07/24/02:

The requestor indicates in its correspondence that they bill all payers identically regardless of whether the injury resulted on the job or not. The Requestor supplied a list of percentage reimbursement of all its cases during the years of 1998 and 1999. This

chart indicates that the average of all payers is 80% and for Texas Workers' Compensation payers it is 84%. A chart that shows the percentage of payment by Texas Workers' Compensation carriers for the year of 2000 has also been submitted. The provider supplied EOB(s) from other insurance carriers in the year preceding 09/11/00 that were paid at 100%. The provider states, "This sampling of 100% payment for services rendered at (Provider) evidences that: Acceptance of fees for services at (Provider) as fair and reasonable occurs across the spectrum of insurances." The provider indicates that Ambulatory Surgical Centers (ASC) are not covered by the Medical Fee Guidelines so they must be paid at a fair and reasonable rate.

2. Respondent: Letter dated 08/09/02:  
"The Requestor billed \$4643.99 as a facility fee and (Carrier) paid \$1437.99. The amount in dispute is \$3186.02. The Requestor has failed to establish that its charges and the reimbursement it seeks are fair and reasonable and comply with the Texas Workers' Compensation Act or TWCC Rules....the Respondent's position that its methodology is appropriate, consistently applied and that its reimbursement in the amount of \$1437.92 to this facility is fair and reasonable."

#### **IV. FINDINGS**

1. Based on Commission Rule 133.307(d) (1) (2), the only date of service eligible for review is 11/14/01.
2. Per the TWCC-60, the provider billed the carrier \$4,643.99 for DOS.
3. Per the TWCC-60, the carrier reimbursed the provider \$1,457.97 for DOS.
4. Per the TWCC-60 the amount in dispute is \$3,186.02.
5. The denial issue is fair and reasonable. This decision will address only those denial codes the provider was aware of prior to filing for dispute resolution.

#### **V. RATIONALE**

Medical Review Division's rationale:

The medical documentation indicates the services were performed at an ambulatory surgery center. Commission Rule 134.401(a)(4) states ASCs, "shall be reimbursed at a fair and reasonable rate..."

Per the Texas Worker's Compensation Act and Rules §413.011(d), "Guidelines for medical services fees must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control. The guidelines may not provide for payment of a fee in excess of the fee charged for similar treatment of an injured individual of an equivalent standard of living and paid by that individual or by someone acting on that individual's behalf. The commission shall consider the increased security of payment afforded by this subtitle in establishing the fee guidelines."

Rule 133.307 (g) (3) (D) places certain requirements on the provider when supplying documentation with the request for dispute resolution. The provider is to discuss, demonstrate, and justify that the payment amount being sought is fair and reasonable. Commission Rule 133.304 (i)(1-4) places certain requirements on the carrier when reducing the billed amount to fair and reasonable. The carrier submitted its methodology which satisfied the requirements of the referenced rule. However, regardless of the carrier's methodology or lack thereof, or a timely or untimely response, the burden remains on the provider to show that the amount of reimbursement requested is fair and reasonable.

There is no current fee guideline for ASC(s). The provider submitted EOB(s) from other carriers paid varying percentages of the billed charges as examples of "fair and reasonable" reimbursement for same or similar services. The willingness of some carriers to reimburse at or near the billed amount does not necessarily document that the billed amount is fair and reasonable and does not show how effective medical cost control is achieved, a criteria identified in Sec. 413.011(d) of the Texas Labor Code. Therefore, based on the evidence available for review, the provider has not established entitlement to additional reimbursement. Therefore, no further reimbursement is recommended.

The above Findings and Decision are hereby issued this 28<sup>th</sup> day of August 2002.

Donna M. Myers, B.S.  
Medical Dispute Resolution Officer  
Medical Review Division

DMM/dmm

This document is signed under the authority delegated to me by Richard Reynolds, Executive Director, pursuant to the Texas Workers' Compensation Act, Texas Labor Code Sections 402.041 - 402.042 and re-delegated by Virginia May, Deputy Executive Director.